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PIPER & MARBURY

L.L.P.

1200 NINETEENTH STREET, N.W.

WASHINGTON, D.C. 20036-2430

202-861-3900

FAX: 202-223-2085

WRITER'S DIRECT NUMBER

(202) 861-3949

FAX: (202) 223-2085

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OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

Re: **Inquiry Concerning the Deployment of Advanced
Telecommunications Capability – CC Docket No. 98-146**

Dear Ms. Salas:

On behalf of Transwire Communications, Inc. ("Transwire") there is transmitted herewith an original and four copies of Transwire's "Comments" in the above-referenced proceeding.

A "Return Copy" of this filing is also enclosed. Please date-stamp the "Return Copy" and return it to the courier delivering this package.

If there are any questions regarding this filing, please contact the undersigned counsel.

Sincerely,



Renee Roland Crittendon

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Inquiry Concerning the Deployment of)
Advanced Telecommunications)
Capability to All Americans in a Reasonable)
And Timely Fashion, and Possible Steps)
To Accelerate Such Deployment)
Pursuant to Section 706 of the)
Telecommunications Act of 1996)

CC Docket 98-146

COMMENTS OF TRANSWIRE COMMUNICATIONS, INC.

Randall B. Lowe
J. Todd Metcalf
Julie A. Kaminski
Renée Roland Crittendon
PIPER & MARBURY, L.L.P.
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
(202)861-3900

Dated: September 14, 1998

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SUMMARY OF THE ARGUMENT

Transwire believes that the deployment of advanced telecommunications capability is proceeding apace, as companies from all segments of the communications and related industries develop technologies to meet the ever-increasing demand for advanced services. Given the continuing developments in advanced telecommunications capability, it is axiomatic that today's technology supporting "advanced" telecommunications capability will be rendered obsolete in the future. In light of the continuing innovations in advanced telecommunications capability, Transwire recommends that the Commission heed the statutory mandate that "advanced telecommunications capability" be technologically neutral. Transwire believes that a Commission ruling which selects at this time the types of technologies capable of supporting advanced services could effectively impede the development of other advanced capabilities, to the detriment of consumers.

Transwire suggests that the Commission establish minimum criteria for the parameters of advanced telecommunications capability based on existing market standards. Parties which develop new technologies in the future should be required to prove that such technologies indeed promote the advancement of telecommunications services or meet a certain threshold for "advanced." Under this "fluid" construct, technological innovation and market demands should determine the outer bounds for advanced telecommunications capability into the future.

The Commission must also support a regulatory environment which encourages technological innovation, capitalization and market investment in advanced telecommunications capability. Transwire supports a regulatory construct whereby the Commission relies as much as possible on free markets and private enterprise to deploy advanced telecommunications capability. Insofar as the market for advanced telecommunications capability is inherently

unbalanced, however, Transwire believes that limited government intervention is justified in some respects. For example, the underlying network that CDM and ADSL wireline advanced service providers need to deliver their service -- the copper facilities of the "last mile" -- are in the hands of the Bell Operating Companies ("BOCs") and other incumbent local exchange carriers ("ILECs"). Limited government intervention is necessary to ensure that the network is open to all potential competitors and that competition takes place on a level playing field.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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Pursuant to Section 706 of the)	
Telecommunications Act of 1996)	

COMMENTS OF TRANSWIRE COMMUNICATIONS, INC.

Transwire Communications, Inc. ("Transwire"), by and through counsel, hereby submits its comments to the Commission's Notice of Inquiry in the above-referenced proceeding concerning the deployment of advanced telecommunications capability (hereinafter the "*NOI*").

I. Introduction

The Commission issued the *NOI* pursuant to Section 706(b) of the Telecommunications Act of 1996 (the "Act"), which directs the Commission to initiate an inquiry into whether advanced telecommunications capability is being deployed to all Americans in a "reasonable and timely fashion."¹ Contemporaneously with the *NOI*, the Commission adopted a *Memorandum*

¹ Pub. L. 104-104, Title VII, § 706, Feb. 8, 1996, 110 Stat. 153, reproduced in notes under 47 U.S.C. § 157 ("47 U.S.C. § 157").

*Opinion and Order and Notice of Proposed Rulemaking.*² The *NPRM*, which was issued in response to six Petitions suggesting action the Commission should take to speed the deployment by wireline carriers of advanced telecommunications capability,³ proposes measures to promote the deployment of advanced services in a competitive manner by both incumbent local exchange carriers (“ILECs”) and new entrants.

Although the *NOI* and the *NPRM* are related in many respects, the Commission has indicated that the instant proceeding is concerned with “the longer-term future” of advanced telecommunications capability.⁴ It is therefore imperative that the Commission refrain from taking any action in this proceeding which could have the unintended effect of impeding the development and deployment of advanced telecommunications capability in the future. To this end, Transwire proposes that the Commission adopt the following policies in this proceeding: (i) ensure that “advanced telecommunications capability” is technologically neutral; (ii) establish minimum criteria based on today’s standards for the parameters of “advanced telecommunications capability”, and require parties offering new technologies to show that such

² In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al., CC Docket No. 98-147, et al., *Memorandum Opinion and Order & Notice of Proposed Rulemaking*, FCC 98-188 (rel. August 7, 1998) (“*Memorandum Opinion and Order*” and “*NPRM*”, respectively).

³ Petition of Ameritech Corp. to Remove Barriers to Investment in Advanced Telecommunications Capability, *Petition of Ameritech Corp.*, CC Docket No. 98-32, dated March 5, 1998; Petition of Bell Atlantic Corp. for Relief from Barriers to Deployment of Advanced Telecommunications Services, *Petition of Bell Atlantic*, CC Docket No. 98-11, dated Jan. 26, 1998; Petition of Southwestern Bell Tel. Co. et al. For Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure & Service, *Petition of Southwestern Bell Tel. Co. et al.*, CC Docket No. 98-91, dated June 9, 1998; Petition of U S West communications, Inc. for Relief from Barriers of Deployment of Advanced Telecommunications Services, *Petition for Relief*, CC Docket No. 98-26, dated Feb. 25, 1998.

⁴ In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to

(footnote continued to next page)

technologies promote the advancement of telecommunications services; and (iii) make certain that the policies adopted in this proceeding complement the measures proposed in the *NPRM* and foster a regulatory environment which encourages technological innovation and fair competition.

Transwire believes that these policies will promote continued technological innovation and deployment of advanced telecommunications capabilities by companies such as Transwire. Like other competitors in the “advanced telecommunications services” industry, Transwire was formed in response to the Act to provide telecommunications services to meet the exploding demand for bandwidth. Transwire utilizes a breakthrough technology, Nortel’s Consumer Digital Mode (“CDM”) technology, to provide a secure, “always up” connection of 1Mbps “downstream” to the user and 320 kbps “upstream” from the user over the existing copper wire telephone infrastructure. While CDM technology meets the same performance specifications as traditional asynchronous digital subscriber line (“ADSL”) technology, Transwire’s technology offers consumers a more cost-effective alternative to ADSL technology.

Transwire is not alone in its quest to develop and offer technologies capable of providing lower-cost advanced telecommunications services on a widespread basis. To maintain the current pace of the deployment of market for advanced telecommunications capabilities flourish, the Commission must ensure that it fosters an environment which encourages technological innovation and fair competition.

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Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146, *Notice of Inquiry*, FCC 98-187, at ¶ 12 (rel. August 6, 1998) (“*NOI*”).

II. Discussion

A. *“Advanced Telecommunications Capability”*

The threshold question in the instant proceeding is what is meant by “advanced telecommunications capability.” Section 706(c)(1) defines “advanced telecommunications capability,” “without regard to any transmission media or technology, as high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”⁵ The Commission requests comment on the intended meaning of “advanced telecommunications capability” and the specific terms comprising the statutory definition.⁶

1. Advanced telecommunications capability must be technologically neutral.

The statutory language makes clear Congress’ intent that “advanced telecommunications capability” be defined “without regard to any transmission media or technology.”⁷ In light of the evolving nature of the technologies capable of supporting advanced telecommunications services, it is critical that the Commission heed the statutory mandate that “advanced telecommunications capability” be deemed technologically neutral. The Commission should not “pick the winners and losers” in the advanced telecommunications field, but provide a climate whereby all competitors, or would-be competitors, are encouraged to develop technologies best-suited to bring advanced telecommunications services to end users.

⁵ 47 U.S.C. § 157 note.

⁶ *NOI* at ¶¶ 13-17.

⁷ 47 U.S.C. § 157, note.

Transwire's technology illustrates this point. Transwire utilizes the existing copper wire telephone infrastructure and Nortel's CDM technology to provide customers with both local and long-distance telephone services, reliable high-speed access to the Internet, corporate "intranets" and Transwire's own "extranet." As previously mentioned, CDM technology is a high-speed asynchronous digital offering of a dedicated connection of 1 Mbps "downstream" capability and 320 kbps "upstream." These speeds are roughly 8 times faster than prevailing dual-channel ISDN products and 17 times faster than popular 56K modems being used today. The combination of dependable telephone services and high-speed data communications will allow Transwire to provide its customers a portfolio of faster, more effective, comprehensive and dependable network communications environments than currently available in the marketplace.

Transwire's technology is a variant of ADSL technology. While Transwire's technology meets the same performance specifications as traditional ADSL technology, Transwire's technology is more cost-effective in that it utilizes existing copper wire without the need for splitters, DSLAM bays or filters. As a result, CDM operational costs are 40 to 50 percent lower than the operational costs associated with ADSL technology.⁸

The Commission must ensure that its definition of "advanced telecommunications capability" does not preclude technologies such as that utilized by Transwire, or other technologies which will inevitably be developed in the future.⁹ The meaning of "advanced

⁸ Attached hereto as Appendix A is a schematic which depicts the differences between typical ADSL technology and the CDM technology utilized by Transwire.

⁹ As a further illustration, Transwire's CDM technology has a somewhat different modulation scheme from the form of DSL advocated by the Universal ADSL Working Group (UAWG), an organization of carriers and hardware and software manufacturers. UAWG promotes its own low-cost, splitterless version of ADSL, called G.lite.

telecommunications capability” will necessarily change over time, capturing new technologies as they are developed and removing others that were once cutting-edge but have since become conventional. The Commission must therefore ensure that advanced telecommunications capability is technologically neutral.

2. The Commission should establish minimum criteria based on today’s standards for the parameters of “advanced telecommunications capability” and require parties offering new technologies to show that such technologies promote the advancement of telecommunications services.

Congress defined “advanced telecommunications capability,” in part, to include “high-speed, switched, broadband telecommunications capability that enables users to originate and receive high-quality voice, data, graphics, and video telecommunications using any technology.”¹⁰ In Paragraph 14 of the *NOI*, the Commission requests comment on the intended meanings of “broadband” and “high speed” telecommunications capability.

Transwire suggests that the term “broadband” is commonly used and understood within the industry to denote sufficient speed to offer the capability of transporting multiple channels of service simultaneously along a single medium. What constitutes “high-speed” capability, however, is difficult to identify and project into the future. Future technologies are likely to deem today’s high-speed capabilities obsolete.

Transwire therefore suggests that the Commission establish minimum criteria for the parameters of “advanced telecommunications capability” based on today’s technological standards. That is, “advanced telecommunications capability” should be, at minimum, that

¹⁰ 47 U.S.C. § 157 note.

which is considered “advanced” in today’s market; *e.g.*, the capabilities of xDSL technology and CDM technology.

Moreover, competitors which introduce new technologies in the future should be required to show that their technologies in fact promote the advancement of telecommunications services or meet some measure of “advanced”. As a model for determining what it considers to be “advanced”, Transwire suggests that the Commission could use those standards previously adopted by the Commission in the pioneer preference arena.¹¹ For example, in considering whether to award a pioneer preference, the Commission used a flexible standard, inclusive of a finding that that the proposed service was not currently provided, was a substantial enhancement of an existing service, or had the capability to bring the technology or service to a more advanced or effective state.¹² The Commission may wish to invoke such a flexible type of standard in determining whether a future capability meets the standard of being “advanced.”

By adopting this “fluid” approach, the Commission will lend guidance as to what should be considered advanced telecommunications capability without foreclosing technologies developed in the future. Technological innovation and market demand will dictate the advanced services available to end users in the future. To the extent that future technological advancements render obsolete the minimum standards adopted in this proceeding, the

¹¹ While Transwire acknowledges that the Commission’s authority to issue pioneer preferences has expired, it believes that the underlying standards adopted by the Commission may offer some guidance with respect to determining whether a certain capability is in fact “advanced.”

¹² Establishment of Procedures to Provide a Preference to Applicants Proposing an Allocation for New Services, 6 FCC Rcd. 3488, 3493-94 (1991).

Commission may revisit the standards for advanced telecommunications capability to accommodate such developments.

B. Reasonable and Timely Deployment

The Commission also seeks comment as to how to determine whether advanced telecommunications capability is being deployed to all Americans “on a reasonable and timely basis.”¹³ In this regard, the Commission requests commenters to provide specific time frames or objective targets for the deployment of new facilities, the availability of services to subscribers, or other standards for determining reasonable and timely deployment.

1. The Commission should avoid establishing restrictive criteria for determining when advanced telecommunications capability is “reasonably and timely deployed.”

In Transwire’s view, adopting a time-specific schedule for the provision of advanced telecommunications capability and services is an unnecessarily rigid approach to ensuring deployment in the near term. Indeed, widespread deployment may be stalled for any number of reasons, including equipment interoperability, loop qualification and testing, and cost. In particular, the speed with which advanced telecommunications capability will be deployed will depend, in large part, upon the extent to which competitors have access to the network elements necessary to provide advanced services – for example, unencumbered copper loops – as well as access to operational support systems (“OSS”),¹⁴ and necessary collocation arrangements.

¹³ NOI at ¶¶ 59-68.

¹⁴ As will be discussed more fully in its response to the *NPRM*, Transwire believes that absolute access to OSS is critical to ensuring competition in advanced telecommunications services and widespread provisioning of advanced telecommunications services to end users. Indeed, the BOCs’ predilection to avoid its statutorily-mandated OSS obligations is most recently evidenced by the Petitions for Reconsideration filed in response to the

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Rather than establish rigid criteria as to when advanced telecommunications capability is “reasonably and timely deployed,” the Commission should adopt policies which foster fair competition and allow market demand to dictate deployment.

Transwire believes that the demand for advanced telecommunications at this stage is almost limitless -- fueled in large part by the increased demand for high-speed Internet access. It is widely recognized that the evolution of the Internet industry has, and will continue to have, enormous implications for the way individuals communicate, work, learn and entertain themselves. Current customer markets, including small and medium businesses, large corporations, home-based businesses, and governmental entities, continue to search for higher-speed connectivity as well as services and products necessary for end-to-end business solutions. Transwire believes these factors indicate a demonstrable demand for advanced services, which should ensure that, with the appropriate competitive safeguards in place, advanced telecommunications capability will be deployed in a reasonable and timely manner.

2. The deployment of advanced telecommunications capability is proceeding apace, but continued growth depends upon the existence of competitive safeguards.

The Commission requests comment on the degree to which advanced telecommunications capability and advanced services are being, or are likely to be, deployed.

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Memorandum Opinion and Order. In their Petitions for Reconsideration, certain BOCs request relief from provisioning loops conditioned to provide advanced services. See *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic for Partial Reconsideration or, Alternatively, for Clarification*, CC Docket No. 98-147, filed September 8, 1998; *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition for Reconsideration of SBC Communications Inc., Southwestern Bell Telephone Company, Pacific Bell and Nevada Bell*, CC Docket No. 98-147, filed September 8, 1998.

Transwire posits that the deployment of advanced telecommunications capability is proceeding apace but, as is discussed *infra*, continued growth can only be assured if the Commission institutes competitive safeguards which will allow deployment to flourish.

Transwire believes that its proposed service deployment is representative of many other competitors in the advanced services field. Transwire is presently offering a limited service in New York City, and the company expects to expand to 17 metropolitan areas by May of next year. A number of ILECs, competitive LECs ("CLECs"), interexchange carriers, and internet service providers are currently deploying or planing to deploy various ADSL-based applications over the next several months.¹⁵ In this regard, it also being reported that "[c]arriers around the world are deploying ADSL, with new service rollouts being announced almost weekly,"¹⁶ and that interoperability advances are "expected to accelerate ADSL service deployment worldwide."¹⁷ In effect, all indications are that many companies are now providing, or are close to providing, many elements of advanced telecommunications capability.

The ILECs clearly have incentives to further deploy advanced telecommunications capability in their current markets and to enter new product and geographic markets. ILECs -- as the "owners" of the network elements -- have great incentive to enter into as many markets as are

¹⁵ See ADSL Trials Worldwide (last modified Sept. 7, 1998) http://www.adsl.com/trial_matrix.html (reproduced and attached hereto as Appendix B).

¹⁶ Hans-Erhard Reiter et al., "ADSL Moves Into Prime Time; Asymmetric Digital Subscriber Line," Information Access Company, a Thomson Corporation Company; Advanstar Communications Inc. America's Network § 15 (vol. 102 1998).

¹⁷ "Industry Leaders Drive Toward Mass Market ADSL Availability; Alcatel, Analog Devices and Texas Instruments Reach First Milestone Toward Multi-Vendor ADSL Interoperability," PR Newswire, July 23, 1998.

affordable to them. Indeed, ILECs' access to funding and control of local bottleneck facilities provide a tremendous incentive for them to enter the market.¹⁸

Moreover, CLECs have growing access to capital and are also currently deploying advanced telecommunications capability. Significantly, in a July 1997 Goldman Sachs U.S. Research report, it was estimated that CLEC revenues would represent 20% of the telecommunications industry's market growth rate in 1998 -- a 3.2% penetration of total telecommunications revenues by year end.¹⁹ These figures represent the expectation that CLEC revenues will nearly double by the end of 1998, from \$3.5 billion to \$6.0 billion -- quite a significant figure.²⁰

Accordingly, while Transwire believes CLECs are as financially prepared as ILECs to offer advanced telecommunications capability -- and are in fact doing so -- deployment is not feasible if monopoly access network practices and other legal and functional barriers are not eliminated. Only in removing such barriers will the Commission encourage ease of entry and rapid deployment by competitive carriers.

In short, private industry certainly has the ability to deploy major elements of advanced telecommunications capability and many advanced services. However, in order to create an effective framework for the development of competitive opportunities in the advanced

¹⁸ The Commission should be mindful, however, that these are also the very means by which ILECs may impede the practical ability of other entrants to compete.

¹⁹ Ken Hoexter et al., "CLECs Seize the Day as the Local Market Opens to Competition," Goldman Sachs U.S. Research, July 1, 1997.

²⁰ Id.

telecommunications capabilities and services market, the Commission must be cognizant of the ILEC's ability to leverage its market power to the disadvantage of private carriers. Once appropriate safeguards against potential anticompetitive behavior by ILECs are in place, the Commission may allow the market to satisfy consumers' demand to its fullest extent.

C. Removing Barriers to Infrastructure Investing and Promoting Competition

1. The networks of the incumbent local exchange carriers -- the existing telecommunications infrastructure -- must be open to broad and guaranteed access to ensure the timely deployment of advanced telecommunications capability to all Americans.

To ensure the continued deployment of advanced telecommunications capability, certain barriers to entry, whether originating with incumbents or regulators, must be removed. Without doubt, the technologies that deliver advanced telecommunications capability will change over time. The Commission's fundamental obligation under the Act is to promulgate regulations, or forbear from regulations as appropriate, that support a robust competitive market and encourage continued investment in and development of infrastructure and technology.²¹ Accordingly, the Commission's prime directive initially must be to ensure that existing telecommunications infrastructure is available and accessible to competing providers of advanced telecommunications capability. Shutting the competition out from the infrastructure will utterly foreclose the timely deployment of advanced telecommunications capability.

²¹ The 1996 Act is "[a]n Act to promote competition and reduce regulation" Pub. L. No. 104-104, 110 Stat. 56 (1996).

First, Transwire advocates the concept that the Commission must ensure that the ILECs' networks -- the existing telecommunications infrastructure -- are open to competing providers of advanced telecommunications services. Congress demonstrated its manifest intent that the Commission fulfill this obligation by enacting, among other similar provisions, sections 251 and 252 of the Act. If the Commission is to fulfill the mandate of section 706 of the Act of ensuring the deployment of advanced telecommunications capability "to all Americans," its first order of business must be to ensure that incumbent local exchange carriers offer broad access to their existing networks.

Under section 251, the ILECs have unequivocal obligations to offer unbundled network elements and the ability to resell services. The incumbent has a "duty to provide . . . nondiscriminatory access to network elements on an unbundled basis at any technically feasible point," and a duty "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers."²² Moreover, Congress defined "network element" quite broadly as "a facility or equipment used in the provision of a telecommunications service."²³ Accordingly, to fulfill its public interest obligation under section 706 to ensure the timely deployment of advanced telecommunications capability, the Commission must ensure that the

²² 47 U.S.C. § 251(c)(3) & (4)(A).

²³ 47 U.S.C. § 153(29).

incumbents open their networks to competition, unbundle fully a broad array of network elements and resell their services to competing providers at wholesale rates.²⁴

In addition, the Commission should recognize that a vibrantly competitive telecommunications marketplace will not evolve from a narrowly defined set of parameters. Rather, competitors must be afforded full access to the ILECs' network infrastructure at all technically feasible points as required by section 251 of the Act. In order to ensure that the goals of section 706, namely timely and efficient deployment of advanced telecommunications services to the American people, are realized, competitors should not be hamstrung in their technological innovations and offerings by unduly restrictive policies.

In its consideration of Section 706, the Commission should recognize that the primary obligation is ensuring that all competitors have an equivalent opportunity to deploy advanced services over the existing ILEC network in a non-discriminatory and competitively neutral manner. The Act makes no judgment as to how or where investment resources should be deployed to accomplish this purpose. Rather, the Act establishes a framework through section 251 whereby all carriers are enabled to make efficient investments in future technology on the same basis as the ILECs themselves by guaranteeing a level playing field in the use of the existing ILEC wireline network.

The inherent quandary confronted by the Act, however, is enforcement of these access guarantees. As it now stands, the ILECs have conflicts of interest that interfere with their

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Through the *Memorandum Opinion and Order* and the *NPRM*, the Commission has undertaken measures which address these issues. Transwire will therefore respond more fully to these matters in its response to the *NPRM*.

incentives to supply potential rivals with cost-based, non-discriminatory, and competitively neutral use of their local wireline networks. These conflicts are the barriers to entry in the conventional local exchange market, and these same conflicts also threaten to interfere significantly with the deployment of advanced telecommunications services by would-be ILEC rivals.

In Transwire's view, the Commission correctly found that fostering CLEC competition in the local market serves the goals of Section 706 for advanced telecommunications capabilities.²⁵ With unbundled elements of the ILEC network available for recombination, or with the wholesale resale discount, CLECs can effectively compete with ILECs' introduction of advanced, broadband local access services. Thus, Transwire believes that it is entirely consistent with Section 706 for such services and network elements of advanced local access solutions to be available through Section 251(c) unbundling and wholesale resale obligations.

Unbundling is part of the essential fabric of the Act and the federal policy to open up the local telecommunications market. Unbundling permits local telecommunications carriers to establish an early foothold in the marketplace, by allowing competitors to combine their own more limited facilities with the elements of the ILECs' ubiquitous network. As the Conference Report on the Act notes, "[i]t is unlikely that competitors will have a fully redundant network in place when they initially offer local service . . . [s]ome facilities and capabilities (e.g., central office switching) will likely need to be obtained from the incumbent local exchange carrier as

²⁵

Memorandum Opinion and Order at ¶ 32.

network elements pursuant to new section 251."²⁶ Unbundling also ensures more competitive pricing of local retail services. Similarly, unbundling serves the public interest because it allows competing providers to recombine some telecommunications elements with other equipment to offer more efficient or niche services than the ILEC may be willing to furnish. Without stringent enforcement of the broad unbundling obligations contemplated by the Act, deployment of advanced telecommunications capability will be not be able to take hold, much less flourish.

Of significant concern to Transwire and to other entities deploying emerging telecommunications technologies is access to the richness of the already existing ILEC copper infrastructure. Although media reports would generally lead the public to believe that copper is obsolescing and being overtaken by fiber, the burst of recent activity on the xDSL front and the emergence of other similarly promising copper-based technologies, including Nortel's CDM technology, clearly demonstrate that copper remains a significant avenue for the provision of advanced telecommunications services to the American people. Transwire asserts, therefore, that the Commission must ensure that unbundled access to copper loops are guaranteed to competing providers of advanced telecommunications technologies.

With guaranteed and broad access to UNEs, such as copper loops, ensured by rigorous enforcement of those obligations by the Commission, competing carriers will be able much more expediently to deploy new technologies and deliver diverse services without having to rely on the ILEC services for the "last mile." From Transwire's standpoint, these rights would greatly

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S. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 148.

improve the ability of competitors to enter and remain in the marketplace and thus expedite the deployment of advanced telecommunications capability to all Americans.

2. The regulatory regime adopted by the Commission must not adhere rigidly to the paradigms of the past.

While it was reasonable in 1934 and the years since to carefully define certain telecommunications industries and set them apart for distinctive regulatory treatment, as new technologies emerge, new regulatory paradigms must also be developed. As the lines separating segments of the telecommunications industry more and more blur, the Commission must respond accordingly. In order to encourage the reasonable and timely deployment of advanced telecommunications capability to all Americans, the Commission must refrain from allowing the paradigms of the past to shortchange the future. Accordingly, the Commission must be prepared, to the extent possible, to merge regulatory regimes such that they recognize and respond to the rapid evolution of technology in a way that does not hinder innovation and improvement in the delivery of advanced telecommunications offerings.

3. The Commission should set a course for ultimate deregulation of the advanced telecommunications marketplace.

Section 706 is inextricably bound to the concept at the heart of the Telecommunications Act of 1996, which is entitled, “[a]n Act to promote competition and reduce regulation . . . and encourage the rapid deployment of new technologies.”²⁷ Accordingly, this proceeding affords the Commission a unique opportunity to set a course toward a deregulated marketplace for

²⁷

Pub. L. 104-104, 110 Stat. 56 (1996).

advanced telecommunications capability. Such a course is the only one consistent with the intent of Congress expressed in the Act.

The first priority, as stated above, must be to ensure that the existing telecommunications infrastructure -- the ILEC networks and OSS capabilities -- is open and readily accessible to competing providers. The telecommunications market, after almost a century of monopoly operation, will not be converted into the robust competitive industry the Act contemplates overnight. Accordingly, the Commission's first and most important step must be promulgating regulations that mandate broad access to unbundled network elements necessary to facilitate the competitive deployment of advanced telecommunications capability.

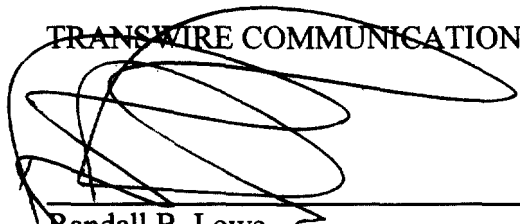
As true competition escalates in the telecommunications marketplace, the Commission should follow the glide path to a deregulated market, governed, as are most industries, only by regulation of the competitive process in the form of antitrust laws and the like. This will, of course, take many years to realize, but the Commission has the opportunity under section 706 of the 1996 to set such a course. Nevertheless, the Commission plays a key role in ensuring the quality of the telecommunications service in this country and should continue in this capacity. The Commission should continue to promulgate and enforce regulatory regimes that foster network reliability and efficiency. The Commission should vigorously pursue a pro-competitive regulatory regime devoted to surety and breadth of access to the existing telecommunications infrastructure, guaranteed interconnection with that infrastructure, and standard-setting to ensure that the quality of our telecommunications offerings are not compromised. By setting and following this course, the Commission will make great strides toward the reasonable and timely deployment of advanced telecommunications capability to all Americans.

III. Conclusion

The deployment of advanced telecommunications capabilities, at efficiencies capable of supporting widespread consumer acceptance of advanced services, is the wave of the future. To encourage the long-term deployment of advanced telecommunications capabilities, the Commission must only undertake such actions necessary to foster fair competition and technological advancement, and allow the market to do the rest.

Respectfully Submitted,

TRANSWIRE COMMUNICATIONS, INC.

A large, stylized handwritten signature in black ink, appearing to be 'Randall B. Lowe', is written over the company name and extends across the list of attorneys.

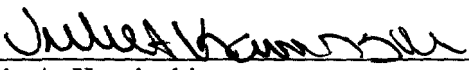
Randall B. Lowe
J. Todd Metcalf
Julie A. Kaminski
Renée Roland Crittendon
PIPER & MARBURY, L.L.P.
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
(202)861-3900

Its Attorneys

Dated: September 14, 1998

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the Comments of Transwire Communications, Inc. was sent via first-class mail, except where otherwise indicated, to the individuals on the attached service list, this 14th day of September, 1998.



Julie A. Kaminski